

IN THE UNITED STATES DISTRICT COURT
NORTHERN DISTRICT OF OHIO (CLEVELAND)

ShieldMark, Inc.)
Plaintiff,) Case No.: 1:12-CV-00223-DCN
v.) Judge Donald C. Nugent
InSite Solutions, LLC.)
Defendant.)

DEFENDANT'S MOTION FOR SUMMARY JUDGMENT OF PATENT INVALIDITY

Now comes Defendant, InSite Solutions, LLC (“InSite”), pursuant to Rule 56, Fed. R. Civ. P. and this Court’s Scheduling Order of May 21, 2012 (Doc. 25), and moves this Court for a summary judgment determination that U.S. Patent 8,088,480 (“the ‘480 patent”) is invalid for failure to satisfy the requirements of patentability set forth in 35 U.S.C. §§ 102 and 103.

As presented more fully in the accompanying brief and supporting declaration, the invention of the asserted claims of the ‘480 patent was on sale in this country more than one (1) year prior to the filing date of the application that led to the issuance of the ‘480 patent and, to the extent there is any difference between an asserted claim of the ‘480 patent and such products that were on sale, the modification of such products to incorporate the difference would have been obvious to a person of ordinary skill in the art. Accordingly, the asserted claims of the ‘480 patent are invalid.

Alternatively, the asserted claims of the ‘480 patent are invalid in that the invention described by those claims was (a) known or used by others in this country before the invention thereof by the inventor of the ‘480 patent and/or (b) was in public use more than one (1) year prior to the filing date of the ‘480 patent.

For the reasons presented above and as set forth more fully in the accompanying brief, InSite requests that this Court find the asserted claims of the '480 patent to be invalid, rendering Plaintiff's Complaint a nullity, and dismissing the same.

Respectfully submitted,

s:/Ray L. Weber

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CERTIFICATE OF SERVICE

I hereby certify that on August 14, 2012 the foregoing **DEFENDANT'S MOTION FOR SUMMARY JUDGMENT OF PATENT INVALIDITY** was filed electronically. Notice of this filing will be sent to all parties by operation of the Court's electronic filing system. Parties may access this filing through the Court's system.

s/Ray L. Weber